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Inside

MEPA Ruling.....2
Clark Fork Study....3
Groundwater Conf....3
EQC Meeting.....4
Fed. Lands Rev.....5
Water Marketing.....5
Water Oversight.....6
Pesticides Report...7
Nat. Res. Subcomm...8
Small-scale Hydro...9
EIS Listing.....11

Montana / Alberta Legislative Exchange

On February 27, a delegation that included eight Montana legislators met in Edmonton with members of the Alberta Legislative Assembly to discuss border issues of concern to state and provincial lawmakers. The Montana legislators were accompanied by staff from the Environmental Quality Council, the Legislative Council, the Department of Agriculture, and the 49th Parallel Institute of Montana State University.

The full-day session focused primarily on agricultural and water issues. In discussing rail transportation, Montanans expressed concern that rising freight rates in Canada might induce Alberta farmers to ship grain on the already burdened rail lines in the U.S. Alberta legislators, however, cited a number of logistical and legal factors that are likely to keep Canadian grain on Canadian rails.

Legislators also compared notes on weed control programs and problems. Knapweed is a weed causing a great deal of concern in both jurisdictions. Participants stressed the need for ongoing communication to keep both jurisdictions aware of management and research efforts on weed control.

Regional free trade of livestock was viewed as a desirable goal by both Alberta and Montana lawmakers. Southern Alberta has excess slaughter capacity and could provide a good market for feeders or fat cattle from Montana. Different immunization standards and quarantine requirements presently represent a major barrier to this trade. The participants agreed to study the legal, economic and veterinary barriers that prevent free movement of livestock across the border.

Water development in the Milk River Basin was the final major topic of discussion. The Milk rises along the east slope of the Rockies in Montana, flows northeast into Alberta, and returns to Montana near Havre. Montana irrigators in the Milk drainage face water shortages in four out of ten years, and thus need increased reservoir capacity to store the spring runoff. At the same time, Alberta has treaty rights to use considerably more of the Milk water than it presently does. If Alberta exercises those treaty rights, Montana farmers will face more severe water shortages.

At the Edmonton session, Montanans reviewed the alternatives for Milk River development which are now under study by the Montana Department of Natural Resources and Conservation. These options include diverting water into the Milk from Tiber Reservoir on the Marias or from the Missouri River at Virgelle. A third option involves developing a joint project with Alberta. Under this option, a dam and reservoir would be constructed on the Milk in Alberta, and the water would be managed to meet the needs of both Albertans and Montanans downstream. This project would involve cost-sharing between the state and province, and would require considerable discussion and negotiation between the two governments.

Members of both the Montana and Alberta delegations expressed satisfaction with the progress made at this first state-provincial legislative information exchange. A second session to follow-up the issues raised in Edmonton is tentatively planned for Montana this summer.

Judge Rules in MEPA Case

On February 16th, the First Judicial District Court of Montana rendered a decision in the case of Montana Environmental Information Center et al v. Montana Power Company et al. In that case, the Montana Environmental Information Center (MEIC) sought an injunction delaying further construction on a 200-mile natural gas pipeline by the Haines Pipeline Company, a contractor for the Montana Power Company. The challengers alleged that: the state's involvement in the project, through the issuance of numerous permits, constituted a major state action; that the project would significantly affect the quality of the human environment; and that the Montana Environmental Policy Act (MEPA) therefore required the preparation of an environmental impact statement before construction could occur.

The defendants argued, among other things, that a number of minor permitting actions had been taken by several state agencies, and if viewed separately none of these constituted a major state action triggering MEPA. In its decision, the court ruled against the defendants on this point, saying that assessing individual actions in isolation was to "cast aside the fundamental philosophy of MEPA which is to promote a comprehensive environmental assessment." The court granted a temporary injunction while

state agencies conduct a review of environmental impacts. This review, the court said, must either establish the need for a full-blown EIS or establish conditions to be attached to the state permits to insure that reasonable measures will be taken to mitigate the pipeline impacts.

State agencies began the required review as soon as the court issued its decision. It is expected to be submitted to the court some time in late March. Soon thereafter, the court will conduct a hearing on the question of whether an EIS should be prepared or the identified impacts can be mitigated by site-specific measures.

EQC Requests Clark Fork Study

At its February meeting, the EQC voted to request the governor to provide a proposal for a comprehensive water quality study of the Clark Fork River. The council's action followed testimony by the Water Quality Bureau staff and the public regarding the proposed modification of the Champion International Frenchtown Mill waste water discharge permit.

A majority of council members voted against an earlier recommendation to require an environmental impact statement before the department could issue the permit, arguing that a comprehensive study of the entire basin is necessary to provide data for decisions in the future. The EQC majority noted that the Clark Fork River receives pollutants from many sources including heavy metals in the upper drainage, domestic wastes from several communities, industrial waste, and degradation from non-point sources throughout the watershed. Council members expressed strong concern over the deteriorating quality in the Clark Fork, but indicated that Champion should not be singled out as the source.

The EQC request to the governor recommended that all major wastewater dischargers join with government agencies in developing and funding the study. It further suggested that such a study analyze: (1) fish populations and benthic organisms; (2) the impact of nutrient-loading on oxygen and eutrophication of downstream reservoirs and lakes; (3) alternative means of discharging wastes; (4) heavy metal contamination in the upper drainage; and (5) potential limitations on additional development as pollution limits are reached.

Groundwater Conference

Montana will host the 13th Annual Rocky Mountain Groundwater Conference on April 8-11 at the Sheraton Inn Convention Center in Great Falls. Technical sessions start on Monday, April 9, with speakers addressing such topics as general hydrogeology, groundwater contamination, mining hydrogeology, water management and new techniques for modeling and monitoring groundwater resources. A special session on the Idaho earthquake of 1983 is scheduled for Tuesday evening, April 10. Pre- and post-conference field trips are planned as well. For more information and registration materials, please contact the EQC or the Montana Bureau of Mines and Geology at Montana Tech in Butte.

EQC Meets

The Environmental Quality Council met February 3 to consider a variety of environmental issues. The council first received an update on Champion International's proposal for a modification of its MPDES discharge permit to discharge treated pulp mill waste into the Clark Fork River throughout the year, instead of only during high water periods as currently allowed. (See article on page 3.)

Tom Schneider, chairman of the Public Service Commission, reported to the EQC on the potential environmental impacts of a power sales agreement between the Western Area Power Administration (WAPA) and the Bonneville Power Administration. Schneider told the EQC that the agreement would result in higher rates for customers of BPA and Northwest utilities; that it might encourage construction of coal-fired generation plants in the Midwest for delivering electricity to the Northwest; that it could encourage construction of future Antelope Valley generating plants, which would contribute to greater air pollution and development of low-BTU North Dakota lignite coal, displacing other Northwest resources such as hydropower and conservation. Schneider also mentioned that the agreement would hurt Northwest ratepayers by damaging the Northwest's ability to sell surplus power to the Southwest, and would encourage the building of longer transmission lines.

EQC members also received an overview of the operations of the Department of State Lands environmental management programs from Dennis Hemmer, commissioner of State Lands. He described the DSL's efforts to encourage potential mining developers to involve the department early in the planning of proposed projects to minimize regulatory delays.

The EQC also discussed a report on small-scale hydroelectric development and heard subcommittee reports.

Following up on long-standing concerns over implementation of the Montana Environmental Policy Act, the council requested the governor to work with the EQC staff to review MEPA procedures to improve agencies' application of MEPA. Of particular interest to EQC members is developing an effective evaluation of cumulative impacts of resource development as required by MEPA. The council believes that these impacts may seem singly insignificant, but they can be important when considered in conjunction with related development. The EQC directed its staff to work with the executive branch to develop these studies. Also of concern to the council are the triggering and use of a PER, interagency coordination, and other procedural issues.

The EQC will meet again Friday, April 6 at 9:00 a.m. in Room 108 of the Capitol in Helena. The agenda includes continued discussion of MEPA issues, a presentation on a proposal to preserve and enhance riparian habitat, oversight of water quality issues, an overview of the programs administered by the DNRC, a presentation on programs to encourage the use of energy conservation and renewable energy sources, and a report on the Alberta-Montana legislative exchange.

Revenue from Federal Lands

The Western Office of the Council of State Governments is cosponsoring with the Public Land Law Review of the School of Law, University of Montana, a major conference on natural resource revenues from federal public lands. Entitled "A Conference on Fiscal Federalism and the Patchwork Quilt of Natural Resource Revenues," the event will be held at the Red Lion Inn (Edgewater) in Missoula, on Monday and Tuesday, May 7 and 8, 1984. The registration fee is $75. Special scholarships are available to state legislators.

The EQC has agreed to assist CSG and the Public Land Law Review in this project and is encouraging legislators to attend.

One of the major responsibilities of the federal government as steward of the public lands is proper management of certain lands for profit-making development. Increasing attention has been placed on the many programs that result in revenues from the federal public lands being shared between federal and state governments. This attention was first focused by charges of mismanagement of oil and gas leases by the federal government which resulted in the investigation and analysis by the Commission on the Fiscal Accountability of the Nation's Energy Resources (the First Linowes Commission) and the ultimate passage of the Federal Oil and Gas Royalties Management Act of 1982.

More recently, the concerns have broadened to question the rate of resource development, the valuation of federal natural resources (which, for coal, was the subject of the Second Linowes Commission), the timing and extent of state and local participation in these leasing and development decisions (subject of the recent U.S. Supreme Court's decision in California v. Watt), the legality of the application of the windfall profits tax to state royalty shares (raised in Regan v. New Mexico), and almost annual proposals by the Reagan Administration to fund the "payments in-lieu of taxes (PILT)" program and/or the budget of the Mineral Mangement Service out of royalty payments.

The Western Office of the Council of State Governments and the Lincoln Institute of Land Policy seek to increase the understanding as to the sources, magnitude, and rationale of revenues flowing to states and localities from natural resource development on federal public lands. To the extent that the awareness of these financial relationships is enhanced, the programs will be better administered, the states will be better situated to cooperate with federal land managers while they enforce the federal government's responsibilities in these areas, and the federal government will be better equipped to meet state and local concerns.

For a copy of the agenda and registration materials, please contact the EQC or call Harley Harris, Editor-in-Chief of the Public Land Law Review in Missoula at (406) 243-6568.

Select Comm. on Water Marketing

The Select Committee on Water Marketing met in Helena on March 3rd and heard a presentation from an economist, Dr. Bruce Finnie, on market factors affecting the possible sale of Montana's surplus waters to industrial users. Dr. Finnie indicated that there is likely to be little or no industrial demand for Montana water in the next ten years.

While he expressed confidence in the current validity of his projections, Finnie did acknowledge that certain unforseeable events could suddenly and substantially affect the potential industrial demand for water. He recommended therefore that the committee continue its consideration of possible mechanisms for marketing water, so that the state may be prepared when and if the need to market surplus water arises.

At its March meeting, the committee also discussed a staff outline of legal considerations that will likely affect Montana's future water management actions. This discussion summarized a legal seminar held in Missoula in January, which was attended by some of the committee members.

Also at the March meeting there was a report from Jim Flynn, director of the Department of Fish, Wildlife and Parks, on the use of instream flow reservations for the protection of fish, wildlife and other values. Flynn stated that instream reservations have proven a useful tool in fish and wildlife management. He noted that the state's fisheries resource is an important contributor to the state's economy. A report by the U.S. Fish and Wildlife Service showed that in 1979, anglers spent $75 million in Montana. Since Montana is highly successful in attracting non-resident fishermen to the state due to its high-quality fisheries, much of these revenues comes from outside Montana and therefore represents a sizeable boost to the state's economy.

While Flynn highlighted the importance of instream reservations to fish and wildlife values, he emphasized that there are other significant values that benefit from the assurance of adequate stream flows. Water quality, for instance, is greatly affected by stream dewatering. As water levels decrease, the ability of streams to assimilate wastes is reduced and the concentration of pollutants is increased. He pointed out that the maintenance of minimum flows is also vitally important to irrigators and other water users who utilize diversion structures, pump stations and headgates.

The Select Committee tentatively plans to meet next in May at the Capitol in Helena. The committee will begin to discuss alternative recommendations that it may make to the next legislature, based on the information it has collected and considered to date.

Water Resources Oversight Comm.

The Water Resources Oversight Subcommittee met in Helena on February 2 to discuss recent information on acid rain and the impact of hard-rock mining exploration on groundwater quality.

The staff summarized proposed federal legislation to control acid rain. Some proposals would be particularly costly to western states and could reduce markets for Montana coal. Current information suggests that Congress may delay action on the issue until more information is available.

Only limited monitoring of acid deposition has taken place in Montana. Bob Raisch, of the DHES Air Quality Bureau, reported to the committee that federal monitoring stations in Glacier Park and on the Fort Peck Indian Reservation have found near normal to slightly acidic rainfall. Some snow surveys in southwestern Montana have shown acid conditions in the mountainous regions near Yellowstone Park. Studies by Dr. Gordon Pagenkopf

of Montana State University are continuing in this region. Raisch indicated the state Air Quality Bureau has not been involved in monitoring, but the agency plans to install a monitoring system in southwestern Montana; the monitoring equipment has not yet received funding under the department's current budget. Although Montana does not appear to have a major problem at the present time, he indicated the need for improved baseline data.

A second discussion topic was the methods used for reclaiming exploratory drill holes associated with hard-rock mining. Although very specific procedures are required for filling and abandoning seismic shotholes and exploratory holes associated with coal and uranium mine exploration, the procedures used in reclamation of hard-rock mining are not well defined. Terry Gratbo, Department of State Lands, indicated this has not been a problem for his department. Although lacking specific rules for methods of reclamation, the department does specify reclamation requirements when it issues permits. He indicated hard-rock mining has not resulted in groundwater contamination problems in the western region of the state where most hard-rock mining occurs. Gratbo indicated the department requires plugging holes through the reclamation requirements, but it would prefer to have specific language requiring hole plugging.

In response to questions about the Small Miners Exclusion, Gratbo indicated there were problems with some placer mines violating water quality. Enforcement is particularly difficult because field inspections and proof of violation are required before complaints can be registered with the Water Quality Bureau.

In other business matters, the subcommittee discussed progress on centralizing natural resource data systems, the need for evaluating cumulative impact of subdivisions on groundwater, and progress of the state water adjudication program.

The subcommittee plans its next meeting on April 5 to hear a progress report on the state water adjudication program.

Pesticides Report

Chemical alternatives to endrin have demonstrated equal or superior pest control with much less environmental disruption, according to Gary Gingery, administrator of the Environmental Management Division of the Department of Agriculture.

Gingery discussed the endrin research as part of his presentation on the department's pesticide management program at the February 2 meeting of the EQC Toxic Substances Subcommittee.

Gingery said that use of the endrin alternatives permethrin and chlorpyrifos are currently permitted under an EPA exemption and that certain data gaps must be filled before the compounds receive federal registration. He noted that EPA has indicated that these compounds are likely to be registered for use within another year.

Permethrin and chlorpyrifos have been touted as improvements over endrin because they are less toxic to wildlife and less persistent in the environment. The cost of using these alternative compounds is now comparable to the cost of endrin. Endrin was used on only 4,000 acres in

Montana in 1983, compared with an estimated 100,000 acres during the major outbreak of cutworms on small grain crops in 1981. The Department of Agriculture's final environmental impact statement on the rules for endrin use was released on March 14. The final statement recommended adoption of the department's proposal to suspend the registration of endrin for cutworm control. Existing endrin stocks can be used for two years.

Gingery said Montana has more stringent requirements than the federal government for use of aquatic herbicides and endrin. John Weigand, the chief of the Wildlife Research Bureau of the Montana Department of Fish, Wildlife and Parks, suggested that Montana should directly apply research results from pesticide testing in other states to the registration of pesticides in Montana. Weigand said that EPA has not adequately assessed the impacts of many pesticides on wildlife during its registration process.

Gingery reviewed for the subcommittee about two dozen instances of environmental contamination from pesticides in Montana in recent years. Nearly all of the problems resulted from violations of the law, although the endrin contamination did occur from legal use. Ignorance of label directions has been a major cause of pesticide misuse, but Gingery stated that the pesticide education program is reducing contamination problems. Gingery added that the department could use additional field specialists to increase the effectiveness of pesticide monitoring and enforcement efforts.

In response to questions on other aspects of the pesticide management program, Gingery stated:

* The departments of Agriculture and Health and Environmental Sciences are cooperating to establish a program for the safe disposal of used toxaphene (a hazardous waste under state and federal law) from livestock dipping operations. Additionally, the Department of Agriculture is developing rules on the disposal of pesticides and pesticide containers.

* Information on the sale and use of pesticides is not freely available to the public, but may be made available if the department finds that the public's right to know outweighs the individual applicator's or dealer's right to privacy. This interpretation was contained in a 1978 ruling by the Montana attorney general.

* Integrated pest management technology is advancing and promises to relieve Montana producers of some pest problems. IPM involves a combination of cropping systems, cultural and physical treatments, biological control and chemicals to control pests.

Natural Resources Oversight

The EQC Natural Resources Oversight Subcommittee met on February 3 in Helena. The meeting was primarily devoted to a discussion with the Governor's Ad Hoc Task Force on the use of monies collected under the Resource Indemnity Trust Tax. Leo Berry, director of the DNRC and a member of the group, indicated that the task force proposes to establish a program supported by appropriate legislation, that will require all prospective recipients of RITT funds to apply to an executive branch agency.

The agency would then conduct a technical review of all requested appropriations, using objective criteria that would be established by the Legislature. The results of this review would become the basis for a single appropriation bill dealing with all RIT expenditures.

The group invited the participation of the subcommittee and EQC staff in preparing such a program. The subcommittee expressed satisfaction with the plan and agreed to participate. Chairman Dave Brown offered the support of the subcommittee and the full EQC in sponsoring the appropriate enabling legislation when needed.

The NRO Subcommittee also heard from Carol Ferguson, administrative officer for the Hard-Rock Mining Impact Board. Ferguson reported on several mining projects soon to be pending before the board. She indicated that a question was recently raised regarding the board's role in reviewing Economic Impact Plans.

The Hard-Rock Mining Impact Act requires the board to grant its approval to any plan, provided no objections are made by local governments within 90 days after its submission by a mineral developer. The law also sets out a specific list of items to be contained in a plan. What then is the board's responsibility when a plan fails to satisfy the statutory criteria but nonetheless is not objected to by an affected government body?

Ferguson said that the board has taken the position that it lacks the authority to approve an incomplete plan, notwithstanding a lack of objection, and therefore must conduct its own review of each impact plan to determine technical compliance. The subcommittee, after lengthy discussion, agreed that a technical review is appropriate, but cautioned that the law does not permit the board to expand this review to include a qualitative evaluation of impact plans.

At its next meeting, scheduled for April 5 at 7:00 p.m. in the Capitol, the NRO Subcommittee will review progress made by DNRC in drafting revised rules for the Major Facility Siting Act. There will also be follow-up discussion on the use of RITT funds.

Small-scale Hydro Report

State officials are currently evaluating more than 70 applications to construct small-scale hydropower projects on Montana streams and rivers. This "gold rush for falling water" has resulted from recent federal and state laws that provide significant financial incentives to hydropower developers. These incentives were established within the past five years, as lawmakers responded to an apparent energy shortage and promoted small-scale hydro as clean, renewable energy with few environmental drawbacks. The departments of Natural Resources and Conservation, Health and Environmental Sciences and Fish, Wildlife and Parks are charged with implementing the state rules.

Small-scale hydro projects that generate electricity from existing dams or from watersheds without competing resource values are often environmentally benign; however, many of the Montana sites where hydropower developments have been proposed pose major conflicts with water quality, fish, wildlife, recreation and agriculture.

Most of the potential small-scale hydro projects in Montana have been proposed for mountain streams in the western half of the state. These projects typically employ a diversion dam to channel streamflow into a penstock, the long pipe which conveys water to the turbine. The penstock often extends several thousand feet downslope in order to obtain the greatest water pressure and thus the greatest electricity generation at the powerhouse.

The second most common category of small-scale hydro project proposed in Montana involves retrofitting existing dams with hydroelectric generators.

The Public Utilities Regulatory Policies Act (PURPA) enacted in 1978 is the major congressional initiative promoting alternative energy development, including hydropower. The Federal Energy Regulatory Commission (FERC), which administers PURPA, has established two conditions that greatly benefit small-scale renewable energy producers. First, FERC requires that utility companies purchase power from these producers at "full avoided cost," or a rate equal to the amount the utility company would have to spend to generate additional electricity from conventional sources. Second, FERC requires the utility companies to allow small-scale power producers to interconnect with the electric utility grid. The combined effect of these rules is to guarantee both a price and a market for energy produced by hydro developers.

In 1981, the Montana legislature passed the so-called "mini-PURPA," which established in Montana the guaranteed purchase and interconnect provisions of the federal act. The Montana Public Service Commission has followed the federal model and used the full-avoided-cost approach in setting the rates at which utility companies must purchase electricity from qualifying facilities.

Under the Federal Power Act, FERC has licensing authority over virtually all nonfederal hydro projects. Environmental review of these projects, however, is the responsibility of state agencies. The Department of Fish, Wildlife and Parks evaluates impacts on fisheries, the Department of Natural Resources and Conservation processes water right applications, and the Department of Health and Environmental Sciences assesses water quality.

For hydro projects proposed on mountain streams, the bypass flow (the amount of water that must bypass the diversion and remain instream) is a major point of contention. Biologists call for adequate instream flows to protect resident and migratory fisheries, while developers wish to divert the maximum amount of water for power generation.

State officials are also very concerned about the water rights implications of hydro projects proposed at existing dams. At these sites, issuance of a water right permit to use the entire river flow for hydroelectric generation could preclude agricultural expansion upstream, since new water withdrawals would reduce the water reaching the generators and thus would infringe on the hydropower water right.

The issue of state-federal relationships is another major concern for Montana. Because FERC has licensing authority over hydro projects, state comments on siting and mitigation are often treated as advisory, even when proposed developments do not appear to be in the state's interests.

Montana officials are currently assessing methods to meet state concerns over instream flows, protection of critical watersheds, water rights and state-federal jurisdiction. EQC will continue to monitor small-scale hydro development in Montana for possible legislative action. A more detailed discussion of these issues is contained in the EQC staff report "Small-Scale Hydro Development in Montana," which is available from the EQC.

EIS Listing

LEAD AGENCY	PROJECT	DRAFT	FINAL
AG	Endrin Rules	7-83	3-84
DSL	Absaloka Westmoreland Mine, Extension, Big Horn County	Mid 1984	
DSL	Consolidation Coal CX Ranch Mine, Big Horn County	Fall 1984	
DSL	Montco Mine, Rosebud County	5-82	Spring 1984
DSL	PER on Teton River Crossing, MPC Natural Gas Pipeline, Pondera and Teton County	3-84	
DSL	Western Energy Rosebud Mine, Area D, Rosebud County	Summer 1984	
DSL	Wolf Mountain Mine, Big Horn County	Fall 1984	
DOE/BPA	Expanded Residential Weatherization Program	9-83	
DOE/BPA	Proposed Memo on Understanding: BPA/WAPA	10-83	
DOE	WAPA Powerline from Great Falls to Conrad	2-84 Comments due 4-16-84	

DOI/BLM	Headwaters Resource Area Management Plan, Butte District	5-83	Expected Early 1984
DOI/BLM	Powder River Resource Area Management Plan, Miles City District	3-84 Comments due 6-7-84	
DOI/BLM	Coal Lease on 17 Tracts in Powder River Basin	1-84	
ICC	Tongue River Railroad, Custer, Rosebud, and Powder River Counties	7-83	
	Supplement on Rail Facilities	1-84	
DOT/DOH	Highway 12 Helena West, Lewis and Clark County	10-83	
DOI/OSM	Federal Review of Montco Mine Rosebud County	2-84 Comments due 4-9-84	

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